

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
EDWARD R. ESTER,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 252

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

A formal hearing on the appeal of Edward R. Ester, owner of the Lannon Apartments, to Notice of Civil Penalty No. 549 for an alleged violation of respondent's smoke emission regulations, came on before James T. Sheehy, a member of the Board, on March 19, 1973 in Seattle, Washington. Appellant appeared pro se and respondent appeared through its attorney, Keith D. McGoffin.

On the basis of testimony heard, examination of exhibits and the file, the Pollution Control Hearings Board prepared Proposed Findings of Fact, Conclusions and Order which were submitted to

the appellant and respondent on May 11, 1973.. No objections or exceptions to the Proposed Order having been received, the Board makes and enters the following:

FINDINGS OF FACT

I.

The Lannon Apartments, located at 19 West Thomas Street, Seattle, King County, Washington, are owned by Edward R. Ester living at 16909 Maplewild S. W., Seattle, Washington.

II.

The owner accepts full responsibility for the performance of the heating system in the apartment and repairs to said heating system.

III.

On the morning of November 13, 1972, an inspector of respondent observed an emission of black smoke from a stack of the Lannon Apartments and measured its intensity. The emission was established by such measurement as a Ringelmann No. 2-3/4 for eight minutes.

Notice of Violation No. 6816 was issued by the inspector.

V.

The adjustments made by appellant did not effect the needed correction and on the following morning, November 14, 1972, two inspectors of respondent, acting jointly, observed an emission of black smoke from the stack of the same Lannon Apartments for a duration of seven minutes and measured its intensity as Ringelmann No. 4.

VI.

Section 9.03(a) of respondent's Regulation I makes it unlawful to cause or allow the emission of an air contaminant for more than three

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 minutes in any hour which is darker in shade than that designated as
2 No. 2 on the Ringelmann Chart.

3 VII.

4 Appellant, having been notified on November 13, 1972 by the
5 manager of the Lannon Apartments, a Mrs. Lunde, did inspect the burner
6 in the apartment, added additional fuel to the oil storage tank and
7 readjusted the burner in an attempt to bring it within the allowable
8 tolerances.

9 From which follows these

10 CONCLUSIONS OF LAW

11 I.

12 Appellant did violate respondent's Regulation I.

13 II.

14 Appellant did not avail himself of an opportunity for possible
15 temporary relief from violation as outlined in Section 9.03(c)(2) of
16 respondent's Regulation I which reads as follows:

17 "In the event of periodic shutdowns, or unavoidable failure or
18 breakdown of any equipment or device or other circumstances beyond
19 the control of any person owning or operating such equipment,
20 including the necessary shutdowns of smoke abatement or dust
21 collection equipment for purposes of maintenance or repair, which
22 tends to produce unlawful emissions of smoke, particulate or other
23 matter, provided that the owner or operator of such equipment or
24 process shall immediately notify the Agency of such shutdown,
25 failure, breakdown or other circumstances, together with the
26 pertinent facts relating thereto and a statement of the date upon
27 which the condition will be rectified and shall also report to the
Control Officer when such defect has been removed and when such
periodic shutdown is over."

24 From which follows this

25 DECISION AND ORDER

26 The appeal is denied and respondent's Notice of Civil Penalty

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 No. 549 in the amount of \$25.00 is affirmed.

2 DONE at Lacey, Washington this 14th day of June, 1973.

3 POLLUTION CONTROL HEARINGS BOARD

4 Walt Woodward
5 WALT WOODWARD, Chairman

6 W. A. Gissberg
7 W. A. GISSBERG, Member

8 James T. Sheehy
9 JAMES T. SHEEHY, Member

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FINDINGS OF FACT,
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